



EC-2002-030
II-A-136

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Mr. Gregory M. Scott
Attorney for Sheetz, Inc.
Collier Shannon Scott, PLLC
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007-5108

Re: Notice of Violations AED/MSEB # 6056

Dear Mr. Scott:

On January 22, 2001 Sheetz, Inc. (Sheetz) notified the U.S. Environmental Protection Agency (EPA) in writing that it sold conventional gasoline in a covered area under the reformulated gasoline (RFG) regulations. On May 7, 2001, Sheetz sent another letter to the EPA informing the agency that it had again sold conventional gasoline in a covered area under the RFG regulations.

These actions violated Section 211(k) of the Clean Air Act (Act), 42 U.S.C. § 7545(k) and regulations at 40 C.F.R. § 80.78, which prohibit any person from selling, distributing, or transporting any gasoline represented as RFG for use in a covered area unless the gasoline meets the RFG standards. The law subjects violators to a civil penalty of not more than the sum of \$27,500 for every day of violation and the amount of economic benefit or savings resulting from the violation.

The Administrator of the Environmental Protection Agency has authority to mitigate the statutory penalty of \$27,500 per violation per day established by the Act. The EPA encourages settlement of such matters rather than initiating litigation. The settlement process provides

substantial flexibility for reducing the statutory penalty, particularly if the alleged violations are corrected promptly.

Moreover, the EPA has established a policy that encourages actions by regulated parties to discover, disclose, correct and prevent violations (Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 FR 19618 (April 11, 2000), also known as the "Audit Policy"). The EPA has reviewed the applicability of the Audit Policy to this matter and has determined that it is appropriate to reduce the gravity portion of the penalty, providing that Sheetz demonstrates that appropriate actions are taken to prevent future violations.

After consideration of the gravity of the violations, the economic benefit received, the size of your business, your history of compliance with the Fuels Regulations, your efforts to correct the violations, your voluntary discovery of the violations and prompt reporting of the violations, and your efforts to prevent future violations (as set forth in the enclosed Settlement Agreement), EPA has determined that a penalty of \$2,500 is appropriate.

Enclosed with this Notice of Violations is a proposed Settlement Agreement to settle this matter consistent with the terms outlined above. If Sheetz is unable to promptly agree to these terms, the EPA reserves the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court asking for substantial civil penalties as well as appropriate injunctive relief. Moreover, the settlement is conditioned upon the completeness and accuracy of the representations made by Sheetz.

The EPA official designated below has been assigned to this case. Please contact him regarding this Notice of Violations and the enclosed Settlement Agreement.

Jeffrey A. Kodish, Attorney/Advisor
U.S. Environmental Protection Agency
Western Field Office
12345 West Alameda Parkway, Suite 214
Denver, CO 80228
(303) 236-9511

Please let me emphasize that while we take our obligation to enforce these requirements seriously, the EPA desires to promote compliance by reducing penalties in appropriate cases where the violations are voluntarily discovered and promptly disclosed and corrected. The settlement terms in this case reflect that policy.

Please sign the settlement agreement and return the original to Jeffrey A. Kodish at the Denver address set forth above. Thank you for your cooperation in this manner.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard Biondini".

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure